

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ZONEPERFECT NUTRITION
COMPANY,

Plaintiff,

v.

HERSHEY FOODS CORPORATION,
HERSHEY CHOCOLATE &
CONFECTIONERY CORPORATION, and
DR. BARRY D. SEARS,

Defendants.

CIVIL ACTION NO: 04-10760 REK

DR. BARRY D. SEARS,

Plaintiff-in-Counterclaim,

and

ZONE LABS, INC.,

Third-Party Plaintiff

v.

ZONEPERFECT NUTRION COMPANY
Defendant-in-Counterclaim and
Third-Party Defendant

**DR. BARRY SEARS' INITIAL
DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(1)**

Dr. Barry Sears ("Dr. Sears") hereby discloses the following pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and Local Rule 26.2. Dr. Sears reserves his right to supplement these disclosures as necessary.

A. Individuals Likely to Have Discoverable Information That Dr. Sears May Use To Support His Claims & Defenses

1. Dr. Barry Sears
Zone Labs
222 Rosewood Drive,
Suite 500
Danvers, MA 01923

Dr. Sears has knowledge of his initial agreement with Eicotech Corporation (and later ZonePerfect Nutrition Company ("ZonePerfect")), his employment with ZonePerfect, the products developed by Dr. Sears during his tenure with ZonePerfect, the products not developed by Dr. Sears during his tenure with ZonePerfect (and thereafter), the negotiation, drafting and execution of Dr. Sears' separation agreement with ZonePerfect, including the Stock Repurchase Agreement, the nutrition bar industry generally, the intellectual property owned by Dr. Sears, Dr. Sears' efforts to protect his intellectual property, the April 1, 2003 meeting referenced in paragraph 79 of the plaintiff's complaint, the nature of Zone Labs' relationship with Hershey Chocolate & Confectionery Corporation ("Hershey"), Dr. Sears' "Zone" technology and principles, ZonePerfect's copyright and trademark infringement and intentional misuse of his name, intellectual property and likeness in attempting to sell ZonePerfect products.

2. Douglas Sears
Zone Labs
222 Rosewood Drive,
Suite 500
Danvers, MA 01923

Doug Sears has knowledge of Dr. Sears' initial agreement with Eicotech Corporation (and later ZonePerfect), Dr. Sears' and Douglas Sears' employment with ZonePerfect, the products developed (and not developed) by Dr. Sears during his tenure with ZonePerfect (and thereafter), the negotiation, drafting and execution of Douglas Sears' and Dr. Sears' separation agreement with ZonePerfect, including the Stock Repurchase Agreement, the nutrition bar industry generally, the intellectual property owned by Dr. Sears, Dr. Sears' efforts to protect his intellectual property, the April 1, 2003 meeting referenced in paragraph 79 of the plaintiff's complaint, the nature of Zone Labs' relationship with Hershey, Dr. Sears' "Zone" technologies and principles, ZonePerfect's trademark and copyright infringement, and intentional misuse of Dr. Sears' name, intellectual property and likeness in attempting to sell ZonePerfect products.

3. George Jochum
Zone Labs
222 Rosewood Drive,
Suite 500
Danvers, MA 01923

Mr. Jochum has knowledge of the negotiation of the Stock Repurchase Agreement, Zone Labs relationship with Hershey, as well as the April 1, 2003 meeting referenced in paragraph 79 of the plaintiff's complaint. Mr. Jochum is also familiar with Dr. Sears "Zone" technologies and principles.

4. Mark Bettencourt, Esq.
Testa, Hurwitz & Thibault LLP
125 High Street
Boston, MA 02110

Attorney Bettencourt has knowledge of the negotiation and drafting of the October 17, 2001 Stock Repurchase Agreement.

5. Stephen A. Hurwitz, Esq.
Testa, Hurwitz & Thibault LLP
125 High Street
Boston, MA 02110

Attorney Hurwitz has knowledge of the negotiation and drafting of the October 17, 2001 Stock Repurchase Agreement. Attorney Hurwitz also has knowledge of ZonePerfect's use of Dr. Sears' name and likeness in attempting to sell ZonePerfect products, ZonePerfect's trademark and copyright infringement, and Dr. Sears' efforts to protect his intellectual property.

6. David J. Byer, Esq.
Testa, Hurwitz & Thibault LLP
125 High Street
Boston, MA 02110

Attorney Byer has knowledge of the drafting and negotiation of the October 17, 2001 Stock Repurchase Agreement. Attorney Byer also has knowledge of Dr. Sears' registration and ownership of certain intellectual property.

7. William L. Prickett, Esq.
Testa, Hurwitz & Thibault LLP
125 High Street
Boston, MA 02110

Attorney Prickett has knowledge of ZonePerfect's mislabeling of its products and those products' non-conformance with Zone principles, as well as Dr. Sears' attempts to rectify same.

8. Elizabeth Walker, Esq.
Testa, Hurwitz & Thibault LLP
125 High Street
Boston, MA 02110

Attorney Walker has knowledge of Dr. Sears' registration and ownership of certain intellectual property.

9. Jennifer Lawson, Esq.
Testa, Hurwitz & Thibault LLP
125 High Street
Boston, MA 02110

Attorney Lawson has knowledge of Dr. Sears' registration and ownership of certain intellectual property.

10. Richard Lenny
Hershey Foods Corporation
100 Crystal A Drive
Hershey, PA 17033-0810

Mr. Lenny has knowledge of the nature of the relationship between Hershey, ZoneLabs and Dr. Sears. Mr. Lenny also has knowledge of the April 1, 2003 meeting referenced in paragraph 79 of the plaintiff's complaint as well as, upon information and belief, the due diligence performed by Hershey relative to its interest in purchasing ZonePerfect.

11. Andrew England
Hersey Foods Corporation
100 Crystal A Drive
Hershey, PA 17033-0810

Mr. England has knowledge of the nature of the relationship between Hersey, ZoneLabs and Dr. Sears. In addition, he has knowledge of the Hershey SmartZone product line.

12. Dennis Eshleman
Hershey Foods Corporation
100 Crystal A Drive
Hershey, PA 17033-0810

Mr. Eshleman has knowledge of the nature of the relationship between Hershey, ZoneLabs and Dr. Sears. Mr. Eshleman also has knowledge of the April 1, 2003 meeting referenced in paragraph 79 of the plaintiff's complaint as well as, upon information and belief, the due diligence performed by Hershey relative to its interest in purchasing ZonePerfect.

13. Christopher Baker
C.P. Baker & Co.
120 Boylston Street, Suite 800
Boston, MA 02116

Mr. Baker has knowledge of Dr. Sears' initial involvement with ZonePerfect, Dr. Sears' initial agreement with ZonePerfect, the development of ZonePerfect's products, Dr. Sears involvement (or lack of involvement) in the development of ZonePerfect's products, monies spent by ZonePerfect on advertising and marketing ZonePerfect's products from 1996 to the present, Dr. Sears' employment with ZonePerfect, the termination of Dr. Sears' employment with ZonePerfect, the negotiation and execution of the October 19, 2001 Stock Repurchase Agreement, negotiations with Hershey regarding the potential sale of ZonePerfect, the April 1, 2003 meeting referenced in paragraph 79 of the plaintiff's complaint, the information provided by ZonePerfect to Abbott Laboratories before, during and after the sale of ZonePerfect to Abbott Laboratories, ZonePerfect's misuse of Dr. Sears' name and likeness on various ZonePerfect products, ZonePerfect's trademarks and copyright infringement and ZonePerfect's efforts to protect its trademarks.

14. Dr. Laurence Chud
86 Waban Hill Road
Chestnut Hill, MA 02467

Dr. Chud has knowledge of Dr. Sears' initial involvement with ZonePerfect, Dr. Sears' initial agreement with ZonePerfect, the development of ZonePerfect's products, Dr. Sears involvement (or lack of involvement) in the development of ZonePerfect's products, monies spent by ZonePerfect on advertising and marketing ZonePerfect's products from 1996 to the present, Dr. Sears' employment with ZonePerfect and the termination of Dr. Sears' employment with ZonePerfect, the negotiation and execution of the October 19, 2001 Stock Repurchase Agreement and negotiations with Hershey regarding the potential sale of ZonePerfect.

15. David Friedson
Anasazi Partners
120 Boylston Street, Suite 800
Boston, MA

Mr. Friedson has knowledge of Dr. Sears' initial involvement with ZonePerfect, Dr. Sears' initial agreement with ZonePerfect, the development of ZonePerfect's products, Dr. Sears involvement (or lack of involvement) in the development of ZonePerfect's products, monies spent by ZonePerfect on advertising and marketing ZonePerfect's products from 1996 to the present, Dr. Sears' employment with ZonePerfect, the termination of Dr. Sears' employment with ZonePerfect and the negotiation and execution of the October 19, 2001 Stock Repurchase Agreement.

16. David Thibodeau
Adams, Harkness & Hill Inc.
60 State Street
Boston, MA 02109

Mr. Thibodeau has knowledge of ZonePerfect's development of certain food products and Dr. Sears' involvement (or lack of involvement) in that process. Mr. Thibodeau also has knowledge of the ingredients of ZonePerfect food products and how those ingredients changed over time. Mr. Thibodeau was also involved in the marketing of ZonePerfect products. Upon information and belief, Mr. Thibodeau also has knowledge of the efforts to sell ZonePerfect, as well as the discussions and negotiations relating to any potential sale.

17. Gary Green, Esq.
Dechert, Price & Rhodes
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793

Attorney Green has knowledge of the negotiation and drafting of the October 17, 2001 Stock Repurchase Agreement.

18. Terence A. Dixon, Esq.
Dechert, Price & Rhodes
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793

Attorney Dixon has knowledge of the negotiation and drafting of the October 17, 2001 Stock Repurchase Agreement. Attorney Dixon also has knowledge of the registration of ZonePerfect's trademarks, ZonePerfect's misuse of certain trademarks and of ZonePerfect's efforts (or lack of efforts) to protect certain trademarks.

19. Christopher Karras, Esq.
Dechert, Price & Rhodes
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793

Attorney Karras has knowledge of the negotiation and drafting of the October 17, 2001 Stock Repurchase Agreement

20. Glen Gundersen, Esq.
Dechert, Price & Rhodes
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793

Attorney Gundersen has knowledge of the negotiation and drafting of the October 17, 2001 Stock Repurchase Agreement and of the registration of ZonePerfect's trademarks.

21. Thomas A. Neely, Esq.
Hale and Dorr LLP
60 State Street
Boston, MA 02109

Attorney Neely has knowledge of the negotiation, drafting and execution of the October 17, 2001 Stock Repurchase Agreement and Dr. Sears' position on ZonePerfect's copyright infringement and unfair and deceptive acts and practices, including its attempts to suggest that Dr. Sears approves or endorses ZonePerfect's products.

22. Denise Kelly
address unknown
978-828-6297

Ms. Kelly has knowledge of ZonePerfect's development of certain food products and Dr. Sears' involvement (or lack of involvement) in that process. Ms. Kelly also has knowledge of certain communications between herself and Mr. Baker regarding the ingredients and future ingredients of certain ZonePerfect products.

23. Bernard Bonn, Esq.
Dechert, Price & Rhodes
200 Clarendon Street
Boston, MA

Attorney Bonn has knowledge of the negotiation of the October 17, 2001 Stock Repurchase Agreement.

24. Dr. Woody Monty
Address unknown
Oregon

Dr. Monty has knowledge of Dr. Sears' Zone principles and technology and whether certain products developed by ZonePerfect complied with Dr. Sears' Zone principles. Dr. Monty acted as a food consultant for ZonePerfect and has knowledge of its products.

25. Schuster Company
Quincy, MA

Representatives of the Schuster Company have knowledge of the development and marketing of certain ZonePerfect food products, as well as Dr. Sears' approval and/or level of involvement in the development of these products.

26. Dr. Paul Kahl
515 North Road
Parsonfield, ME 04047

Dr. Kahl has knowledge of Dr. Sears' Zone principles and technology and whether certain products developed by ZonePerfect complied with Dr. Sears' Zone principles. Dr. Kahl also has knowledge of ZonePerfect's use of Dr. Sears' name and likeness in selling ZonePerfect products.

27. Dave Schrek
Zone Cuisine
New York, New York

Mr. Schrek has knowledge of complaints received from customers regarding certain food products developed by ZonePerfect.

28. Ann Genovese
Zone Labs
222 Rosewood Drive,
Suite 500
Danvers, MA 01923

Ms. Genovese has knowledge of complaints received from customers regarding certain food products developed by ZonePerfect.

29. Joan Apgar
Address unknown

Ms. Apgar has information regarding the results of certain medical testing performed on certain food products developed by ZonePerfect.

30. Scott Lane
Address unknown

Mr. Lane worked as an outside food consultant for ZonePerfect and has knowledge of certain products developed by ZonePerfect during 1997 and thereafter.

31. Keith Bright
Address unknown

Mr. Bright worked as a graphic design consultant for ZonePerfect and has knowledge of the development of the ZonePerfect logo.

32. Gary Hincey
Address unknown

Mr. Hincey worked as an outside marketing consultant for ZonePerfect and has knowledge of the marketing of ZonePerfect products.

33. Robert Liljenwall
Address unknown

Mr. Liljenwall worked as an outside marketing consultant for ZonePerfect and has knowledge of the marketing of ZonePerfect products.

34. Peter Benjamin
Address unknown

Mr. Benjamin worked as an outside marketing consultant for ZonePerfect and has knowledge of the marketing of ZonePerfect products.

35. Diane Hnat
DSM
340 Kingsland Street
Nutley, NJ 07110

Ms. Hnat has knowledge of testing performed on ZonePerfect products and the presence (or absence) of ingredients contained therein.

36. Covance Inc.
3301 Kinsman Blvd.
Madison, WI 53704

Covance Inc. has knowledge of testing performed on ZonePerfect products and the presence (or absence) of ingredients contained therein.

B. Documents, Data Compilations and Tangible Things In the Possession, Custody or Control of Dr. Sears That He May Use To Support His Defenses and/or Claims

The following is a description by category and location of all documents, data compilations and tangible things within Dr. Sears' possession, custody or control that he may use to support his defenses and/or claims. Unless otherwise noted, the identified categories of documents are located at Zone Labs, 222 Rosewood Drive, Suite 500, Danvers, MA 01923

These documents include:

1. Dr. Sears' initial agreement with Eicotech and ZonePerfect, including drafts thereof and communications on this subject.
2. Documents reflecting Dr. Sears' work for ZonePerfect, the products he developed and the products developed without his permission, knowledge or consent.
3. Documents reflecting communications between Dr. Sears and Christopher Baker relating to the relationship between Dr. Sears and ZonePerfect, and the development of ZonePerfect products.
4. Documents reflecting the negotiation of Dr. Sears' Stock Repurchase Agreement with ZonePerfect including draft agreements, electronic mail, correspondences, memos and the final agreement, among other documents. These documents are located both within Dr. Sears' files and the files of his attorneys.
5. Documents reflecting ZonePerfect's misuse of Dr. Sears' trademarks, copyrights and his name and likeness.
6. Documents reflecting Dr. Sears' efforts to protect his trademarks, copyrights, name and likeness.
7. Dr. Sears' trademark applications and approvals of trademark from the Patent & Trademark Office. These documents are within the files of Dr. Sears' attorneys.

8. Dr. Sears' actual communications and interactions with representatives of Hershey Foods.
9. ZoneLabs' agreement with Hershey.
10. Documents reflecting ZonePerfect's copyright infringement.

C. Computation Of Any Category of Damages

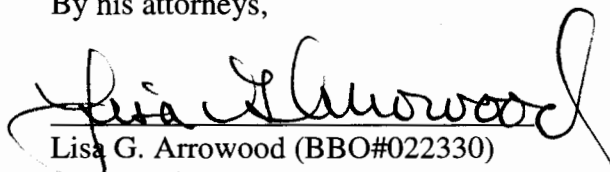
At this time, Dr. Sears is unable to quantify his damages suffered as a result of ZonePerfect's breach of contract and misuse of his trademarks, copyrights, name and likeness. One proper measure of damages is ZonePerfect's profits achieved as a result of their wrongful conduct. Until ZonePerfect produces its financial records, Dr. Sears is unable to quantify these damages. Dr. Sears also seeks non-monetary damages, including injunctive relief and the cancellation of certain trademarks as set forth in his counterclaim.

D. Insurance Agreement

Zone Labs, Inc. possesses a Director and Officer Liability policy with the Philadelphia Insurance Companies. Zone Labs has a commercial general liability policy with Evanston Insurance Company. Dr. Sears has placed those entities on notice of this action. These insurance policies are available for inspection and copying upon request.

BARRY D. SEARS

By his attorneys,



Lisa G. Arrowood (BBO#022330)

Ian Crawford (BBO#544475)

Edward Foye (BBO#562375)

David H. Rich (BBO#634275)

Todd & Weld LLP

28 State Street

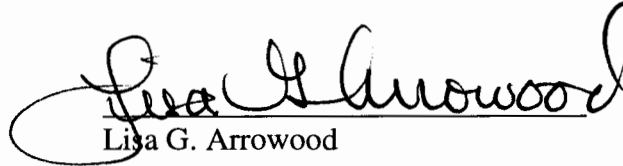
Boston, MA 02109

(617) 720-2626

Dated: May 10, 2004

CERTIFICATE OF SERVICE

I, Lisa G. Arrowood, hereby certify that I have this 10th day of May, 2004, served the foregoing by delivering them by electronic mail and regular mail to all counsel of record.


Lisa G. Arrowood